IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3137 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

SHANTILAL BHAILALBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR SHAILESH C PARIKH for Petitioner
MS RV ACHARYA AGP for Respondent No. 1 & 3
No one has appeared on behalf of Agricultural Produce Market Committee.

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 03/04/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. The petitioner in this case has come with the case that he has been serving as a teacher and owns certain lands in Patdi which he has inherited from his forefathers. His case is that, in past also, his lands were acquired on four occasions and on all the four occasions he had surrendered to the requirements for the purpose of Agricultural Produce market Committee, Patdi, Cooperative Spinning Mill, Seed Farm established within the revenue limits of Patdi and Cooperative ginning and Pressing Factory. In the present case, the acquiring body is Agricultural Produce Marketing Committee, Patdi constituted under the Gujarat Agricultural Produce Markets Act. It has been alleged that one Shri Thakkar, who was the Chairman of Agricultural Produce Market Committee and other office bearers managing the affairs of the respondent Committee are inimical to the petitioner and his lands are sought to be acquired only to deprive him of his rights; the respondent Committee is in possession of more than enough lands and although it does not need any extra land for its legitimate purpose and its activities, yet the petitioner's land was sought to be acquired; in the year 1988, there was a movement to acquire the lands of the petitioner by the respondent Committee and at that time the petitioner had submitted an application to the Deputy Collector of Dhangadhara objecting to the movement for acquisition of his lands. The petitioner has referred to such application being application dated 23.7.1987, a copy of which is annexed as Annexure-A to the petition. However, the lands of the petitioner were measured on 18.11.1988 and thereafter again on two occasions in the months of February and March, 1989. Knowing that the respondents were bent upon to acquire the petitioner's land for absolutely extraneous and irrelevant considerations under the guise of so-called public purpose, though the respondent does not need any extra lands, the petitioner sent a notice dated 4.2.1989 to the respondent through his advocate pointing out various objections against such acquisition. According to the petitioner, without considering the objections raised in the earlier application and notice, a notification under Section 4 of the Land Acquisition Act, 1894 was issued on 20.7.1989 for acquisition of the lands of 18 gunthas from survey No.1397/1 and 1 acre 13 gunthas from survey No.1397/2. Thus, in all, land of 1 acre 31 gunthas was sought to be acquired from the petitioner. The petitioner submitted his written objections under Section 5-A of the Act on 27.7.1989 against the proposed acquisition. Thereafter, the

notification under Section 6 of the Act was published on 27.9.1989. The petitioner's grievance is that he was not heard on his objections. Although the notification under Section 6 has been issued on 27.9.1989, the petitioner's say was that he did not know about this notification issued under Section 6 and he came to know about it only when he received a notice under Section 9 of the Act on 23.10.1989. On 2.1.1990, a camp was held by the respondent No.3 Deputy Collector at Patdi and at that time also, the petitioner raised objections. Thereafter, an award was made by the respondent No.3 on 16.2.1990 and the petitioner was served that notice dated 5.3.1990 issued under Section 12 (2) of the Act.

2. The acquisition of the petitioner's lands as aforesaid was subjected to challenge through this petition dated 1.4.1990 and on 10.4.1990, Notice was issued and thereafter Rule was issued on 6.3.1991 and considering the allegations of mala fides made against the acquiring body and the fact that the petitioner was prepared to hand over possession of the lands of survey No.1397/1, which is adjacent to the land sought to be acquired, and also the fact that adjacent to survey No.1397/1 there is a Government kharaba land which can be handed over to the Market Committee, the respondents were directed to maintain status quo as on that date, i.e. 6.3.1991. This order has remained in force throughout.

3. So far as the pleadings in this case are concerned, apart from the pleadings as contained in the Special Civil Application along with the documents annexed therewith, we find that the report dated 11.2.1991 filed by the Secretary of the Agricultural Produce Market Committee, Patdi is on record along with the documents filed therewith and there is also an affidavit-in-rejoinder dated 25.2.1991 filed by the petitioner. We have heard learned counsel and have gone through the pleadings. It is clear from the pleadings of the parties that the lands of the petitioner were acquired for the public purpose after issuing the notification under Section 4, after considering the objections filed under Section 5-A and thereafter issuing the notification under Section 6. So far as the petitioner's grievance that no personal hearing was afforded to him before issuing the notification under Section 6 is concerned, it may be straightway observed that the petitioner had never asked for an opportunity of personal hearing and, therefore, even if the argument of the learned counsel is accepted that the provisions for inviting objections are mandatory, it cannot be said that there has been any violation of the requirement of law

inasmuch as the objections were invited, the petitioner did file his objections and the notification under Section 6 was issued only thereafter.

4. The submission made on behalf of the petitioner is that he is prepared to part with the lands of survey No.1397/1 and, therefore, the lands of survey No.1397 may be retained in acquisition but the part of the land of survey No.1397/2, which the petitioner had sold out to a cooperative housing society, should be left free from acquisition. It is found from the map that the lands of survey No.1397/1 are not contiguous and adjacent to the lands of Agricultural Produce Market Committee unless the lands required from survey No.1397/2 is also taken. Therefore, in our opinion, this offer which has been made by the petitioner may not serve the purpose of acquisition. In any case, we do not find that the acquisition proceedings in this case suffer from any illegality or infirmity so as to warrant interference of this Court. On the question of allegation of mala fides, it may be stated that the then Chairman of the Agricultural Produce Market Committee has not been impleaded as a party to these proceedings and it is also stated by the learned counsel for the petitioner that Shri Thakkar, the then Chairman of the Agricultural Produce Market Committee, has died during the pendency of this petition in the year 2000. Simply because the petitioner's lands had been sought to be acquired for different purposes as aforesaid on four occasions does not by itself constitute a case of mala fides and there is no reason to hold that the lands have not been acquired for public purpose. At this stage, the learned counsel for the petitioner has submitted that large number of lands acquired by the Agricultural Produce Market Committee are lying unused and that the purpose of the Committee can be served even if the lands of survey No.1397/1 are acquired and that part of the land of survey No.1397/2 which has been sold to a cooperative housing society may be set free from acquisition. There is no reason for us to enter into this controversy at this stage when the lands have already been acquired, award has been passed and they have become vested in terms of Section 9 of the Act. We do not find any merit in this Special Civil Application. The same is hereby rejected. Rule is hereby discharged. Interim order passed on 6.3.1991 automatically comes to an end. No order as to costs.

5. At this stage, the learned counsel for the petitioner has made a request that this order may be kept in abeyance for few days. We do not find any

justification for staying this order. The request is hereby declined.

Sd/-
(M.R.Calla, J.)

Sd/-

03.4.2001 (D.H.Waghela, J.)
(KMG Thilake)